

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TROY BURNS and KELLY BURNS,
and the marital community comprised
thereof,

Plaintiff,

v.

DYNIA AND ASSOCIATES, an
Illinois limited liability company, also
known as D&A Services, also known
as D&A Services, LLC; and SECOND
ROUND SUB, LLC, a Texas limited
liability company,

Defendants.

NO: 2:15-CV-360-RMP

ORDER GRANTING MOTION FOR
REMAND

BEFORE THE COURT is Plaintiffs' Motion for Remand, **ECF No. 2**.

Additionally, Plaintiffs have requested an award of attorney's fees. ECF No. 5. The Court has reviewed the motion, the response memorandum (ECF No. 4), the reply memorandum (ECF No. 5), the sur-reply memorandum (ECF No. 9), and is fully informed.

MOTION FOR REMAND

Plaintiffs move to remand this matter to Spokane County Superior Court on the grounds that Defendants' removal was untimely. Under 28 U.S.C. § 1446(b)(1), “[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446(b)(1). Plaintiffs assert that, as Defendants were served with the summons and complaint on October 12, 2015, Defendants' December 30, 2015, notice of removal is untimely. ECF No. 2 at 3. Defendants do not oppose Plaintiffs' Motion for Remand. ECF No. 4.

As Defendants do not oppose Plaintiffs' Motion for Remand, the Court
GRANTS Plaintiffs' Motion for Remand, ECF No. 2.

ATTORNEY'S FEES

In their reply memorandum, Plaintiffs request that this Court award attorney's fees based on Defendants' frivolous removal. ECF No. 5 at 4. Plaintiffs request \$3,000 in attorney's fees representing ten hours of work at \$300 per hour. *Id.* at 5. Defendants argue in a sur-reply that 1) Plaintiffs improperly raise the attorney's fees issue in a reply memorandum; and 2) that removal was not frivolous. ECF No. 9.

“An order remanding the case may require payment of just costs and any actual expenses, including attorney’s fees, incurred as a result of the removal.” 28

1 U.S.C. § 1447(c). “Absent unusual circumstances, courts may award attorney’s
2 fees under § 1447(c) only where the removing party lacked an objectively
3 reasonable basis for seeking removal.” *Martin v. Franklin Capital Corp.*, 546 U.S.
4 132, 141 (2005). Before awarding attorney’s fees, the Court must determine “that
5 the fees requested were reasonable.” *Sankary v. Ringgold*, 601 F. App’x 529, 530
6 (9th Cir. 2015).

7 The Court will not deny Plaintiffs’ motion for attorney’s fees based solely
8 on the basis that Plaintiffs first raised their request in the reply brief. However, the
9 Court will order additional briefing to both provide a detailed accounting of hours
10 worked by Plaintiffs’ counsel and allow Defendants to respond to Plaintiffs’
11 request for attorneys’ fees on the merits, including whether there was a legal basis
12 for removing to federal court and whether the requested amount of attorneys’ fees
13 is justifiable.

14 Accordingly, **IT IS HEREBY ORDERED:**

- 15 1. Plaintiffs’ Motion for Remand, **ECF No. 2**, is **GRANTED**.
- 16 2. Plaintiffs must file a supplemental memorandum setting out a detailed
17 accounting of hours worked on their Motion to Remand by February 9,
18 2016.
- 19 3. Defendants may file a memorandum opposing Plaintiffs’ motion for
20 attorneys’ fees no later than February 16, 2016, addressing both whether

1 Defendants had an objectively reasonable basis for seeking removal as
2 well as Plaintiffs' requested attorney's fee computation.

- 3 4. Plaintiffs may file a response no later than February 23, 2016.
4 5. The motion for attorneys' fees will be heard without oral argument on
5 February 29, 2016.
6 6. The Court hereby **REMANDS** this case to the Spokane County Superior
7 Court for all issues other than the determination of attorneys' fees.

8 The District Court Clerk is directed to enter this Order, and provide copies to
9 counsel as well as a certified copy of this Order to the Clerk of the Spokane
10 County Superior Court. **This Clerk of Court shall set a hearing for February**
11 **29, 2016, at 6:30 PM.**

12 **DATED** this 2nd day of February, 2016.

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14 *s/ Rosanna Malouf Peterson*
15 ROSANNA MALOUF PETERSON
16 United States District Judge
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